S.B. CIVIL MISC. APPEAL NO.1585/2006.
(The New India Assurance Co. Ltd. Vs. Smt. Shanti Devi & Ors)

Date of Order :: 16.10.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Jagdish Vyas, for the appellant.

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Heard learned counsel for the appellant and perused the impugned award.

The insurer of the offending vehicle bearing registration number MP 04 K 6517 that caused a fatal accident having been accorded permission under Section 170 of the Motor Vehicles Act, 1988 to contest the claim application seeks to question the quantum of compensation of Rs.6,93,000/- together with interest at the rate of 7.5 per cent per annum awarded by the Motor Accidents Claims Tribunal [First], Jodhpur in its award dated 17.12.2005 made in Claim Case No. 124/2005 to the six dependants of the victim Oma Ram @ Om Prakash (about 28-30 years) who was admittedly working as a driver of heavy vehicle and died on the truck he was driving being hit by the on-coming dumper insured by the appellant.

The accident in question occurred on 18.08.2004 at about 6.30-7.00 a.m. at National Highway No. 11 on Bharatpur to Jaipur Road when the aforesaid dumper hit the

truck driven by the deceased Oma Ram; and after drawing adverse inference against the non-applicants for not producing the dumper driver in evidence and noticing that the dumper hit the truck on the wrong side causing fatal injuries to Oma Ram the Tribunal has held the dumper driver responsible for the accident and has held the non-applicants liable for compensation.

The Tribunal while quantifying compensation has referred to the fact that the date of birth of the deceased was stated in his driving licence Ex. 12 as 04.12.1976 hence he was 28 years of age at the time of accident though the claimants stated his age at 30 years. The Tribunal noticed the fact established on record that the deceased was a driver of heavy vehicle with reference to his driving licence but did not accept the assertion of the claimants about his income at Rs. 6,000/- per month; and for want for cogent documentary evidence on record, considered it proper to estimate his income at Rs. 3,000/- per month. However, the Tribunal provided for a component of future enhancement of income of the deceased and hence took his average income at Rs. 4.500/- per month and after deducting one-third on personal expenditure of the deceased and applying a multiplier of 18, assessed pecuniary loss at Rs.6,48,000/-. The Tribunal allowed Rs.35,000/- towards non-pecuniary loss for the wife, three children and parents of the deceased and further Rs.10,000/- towards

funeral expenses to award compensation in the sum of Rs.6,93,000/- and allowed interest @ 7.5% per annum from the date of filing of the claim application.

The insurer contends that the compensation for loss of life must only be just compensation and the award in question is highly excessive. According to the appellant-insurer, the deceased was earning as a private truck driver and when his income was estimated at Rs. 3,000/- per month and multiplier of 18 was applied as per Second Schedule appended to the Motor Vehicles Act, 1988, the Tribunal was not justified in providing for enhancement in income with reference to future prospects and the Tribunal was not justified in assessing the loss of dependency to the tune of Rs.36,000/- per annum. Further, according to the appellant-insurer, choice of multiplier of 18 is also on the higher side.

Having examined the award in its totality, this Court is satisfied that this appeal by the insurer remains bereft of substance and does not merit admission.

From the facts established on record it is but apparent that the deceased was working as a driver of heavy vehicle; and in fact he died while driving a truck on National Highway albeit for the fault of other driver. In the context of the job the deceased was engaged in and with reference to the period of accident of the year 2004, it sounds inadequate and

rather on the lower side to assume the income of a truck driver merely at Rs. 3,000/- per month; and the Tribunal could have estimated it higher too. Moreover, the dependents of the deceased are shown to be his wife in 28 years of age, three children respectively in 06, 04 and 02 years of age, father in 50 years and mother in 48 years of age. In view of the family set up and the responsibilities of the deceased, deduction of one-third on his personal expenditure definitely stands higher than reasonable. With a comparatively larger family consisting of seven persons including himself to maintain, unit method of assessment of loss of contribution could have been adopted; and personal expenditure of the deceased could have been taken at about 25% of his income and not 33%.

In the aforesaid view of the matter, this Court is satisfied that even if no component of future prospects is provided because of the deceased being only in a private job with no certainty of increment yet the assessment of loss of contribution at Rs. 36,000/- per annum does not appear excessive. Application of multiplier of 18 also does not appear unjustified when it is noticed that the age of the deceased was less than 30 years. Non-pecuniary loss has also been awarded at moderate level in the sum of Rs. 35.000/-. Funeral expenses at Rs. 10,000/- of course stand wee bit on higher side, but in view of reasonably moderate amount allowed towards other losses, in the ultimate analysis, the award made by the Tribunal

in this case in the sum of Rs.6,93,000/- cannot be said to be highly excessive and does not require interference at the instance of the appellant-insurer.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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